

Editor's note: appealed - aff'd, Civ.No. 81-321 (D.Wyo. Feb. 3, 1982); aff'd in part, rev'd in part, No. 82-1446 (10th Cir. Nov. 7, 1983), 721 F.2d 694 cert. denied, 104 S.Ct. 2347, 466 US 972 (1984)

FLOYD O. LOCHNER

IBLA 81-72

Decided July 28, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer for violations of regulations regarding disclosure of parties in interest. W-63025.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Sole Party in Interest -- Oil and Gas Leases:
First-Qualified Applicant

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Sole Party in Interest -- Oil and Gas Leases:
First-Qualified Applicant

Where an individual files an oil and gas lease offer through a leasing service

under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

3. Equitable Adjudication: Generally -- Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Oil and Gas Leases: Applications: Generally

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

APPEARANCES: David B. Kern, Esq., Milwaukee, Wisconsin, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

On February 24, 1978, Floyd O. Lochner filed a drawing entry card (DEC) with the Wyoming State Office, Bureau of Land Management (BLM), for parcel WY 54 in the February 1978 list of parcels available for filing of simultaneous oil and gas lease offers. The card was completely and, apparently, properly filled out. It bore the signed affirmation that Lochner was the sole party in interest in both the offer and the lease, if issued to him.

Lochner's DEC received first priority in the drawing. Subsequently, BLM sent Lochner a letter which read in part:

Since your drawing entry card was filed for you by Fred Engle, d/b/a Resource Service Company, we are requesting a certified copy of the agreement, sales contract, or any other contractual material signed by you, that was entered into at the time the offer was made. This further evidence is required so that we may verify there was no violation of our regulations regarding sole party in interest or multiple filings. 43 CFR 3102.7; 43 CFR 3112.[5-2.]

This letter dated April 6, 1978, was apparently prompted by BLM's cognizance of prior Board decisions holding leasing service contracts between Resource Service Company (RSC) and its clients to be violative of Departmental regulations regarding sole party in interest, 43 CFR 3102.7 (1979), and multiple filings, 43 CFR 3112.5-2 (1979). See Alfred L. Easterday, 34 IBLA 195 (1978) (decided on March 22, 1978); Sidney H. Schreter, 32 IBLA 148 (1977) (decided on September 12, 1977); and Lola I. Doe, 31 IBLA 394 (1977) (decided on August 19, 1977).

In response to BLM's request, Lochner submitted the original service agreement between him and RSC, dated July 5, 1977. Reference to the filing agreement obtained by BLM discloses that Lochner had authorized RSC to be his exclusive agent for the marketing of his interest in the Federal oil and gas lease he hoped to acquire in the February 1978 simultaneous drawing. Their agreement, executed prior to the drawing in July 1977, required Lochner to pay RSC commissions on all proceeds of the sale of the lease according to a set schedule. The commission extended to the reservation of overriding royalties as well as the initial consideration for sale of the lease. The commission applied to any sale, regardless of whether it was negotiated by RSC. This agency relationship was to last 5 years. Appellant Lochner also submitted a copy of a disclaimer executed January 13, 1977, by Fred Engle, d.b.a. RSC.

After reviewing the agreement between RSC and Lochner, BLM issued its decision of September 18, 1980, rejecting Lochner's offer because of noncompliance with 43 CFR 3102.7 (1979) and 43 CFR 3112.5-2 (1979). Lochner and RSC then took this appeal. ^{1/} Appellants' argue in their statement of reasons for appeal that RSC had no interest in Lochner's lease offer because the waiver of any such interest which Fred Engle, d.b.a. RSC, gave to BLM in January 1977 eliminated any such interest, that the Department is estopped from denying the effectiveness of the waiver, and that the decision finding the waiver ineffective and rejecting the lease offer was an improper retroactive adjudication of the issues.

^{1/} BLM's decision also rejected the offer of the second drawee, Jim Herbert Morris, who also had a contract with RSC. Morris has not appealed the decision.

[1] This Board has previously considered similar situations involving RSC and its clients and has consistently held that this service agreement gives RSC an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979), and that the failure to disclose this interest is a violation of the regulations requiring rejection of the offer or cancellation of the lease. Wilbur G. Desens, 54 IBLA 271 (1981); Inexco Oil Co., 54 IBLA 260 (1981); Home Petroleum Corp., 54 IBLA 194, 88 I.D. 479 (1981); Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981); D. R. Weedon, Jr., 51 IBLA 378 (1980); Donald W. Coyer (On Judicial Remand), 50 IBLA 306 (1980), aff'd, Coyer v. Andrus, Civ. No. C78-104K etc. (D. Wyo. Mar. 5, 1981); Frederick W. Lowey, 40 IBLA 381 (1979), aff'd, Lowey v. Watt, Civ. No. 79-3314 through 79-3319 (D.D.C. May 28, 1981). BLM has also had occasion to reject offers in which other leasing services held undisclosed interests, and we affirmed those decisions as well. Gertrude Galauner, 37 IBLA 266 (1978); Marty E. Sixt, 26 IBLA 374 (1978).

[2] The unilateral effort to RSC to disclaim the interest in the lease offer created by the agreement has been considered by the Board and held invalid for lack of communication of the waiver to the offeror or receipt of consideration to bind the contract. Wilbur G. Desens, supra at 276. Further, as the disclaimer was dated January 13, 1977, it was superseded by the agreement of July 5, 1977, between Lochner and RSC which created the interest in the subject lease offer and the disclaimer would not apply to this case. Home Petroleum Corp., supra at 204, 88 I.D. at 484 (1981).

[3] The allegation that the Department is estopped from canceling the lease because RSC relied on BLM's approval of the disclaimer at the time it was made as a means of eliminating the interest in lease offers must be rejected. This Board held in a similar case involving appellant RSC and the disclaimer at issue in this case, after an evidentiary hearing, that RSC had constructive and actual knowledge that BLM state office employees are subordinate level personnel without power to bind the Department, that their decisions are subject to reversal on review by the Secretary or his delegates, and, therefore, the essential element of reasonable reliance is missing. Donald W. Coyer (On Judicial Remand), supra at 313-14. We reaffirm our holding that the Department is not estopped from rejecting Lochner's offer for the reasons stated in that decision. For the reasons stated in detail in our decision in D. R. Weedon, Jr., supra at 383-84, we must reject appellant's contention that the decision finding the waiver ineffective and rejecting Lochner's lease offer for violation of the regulations regarding disclosure of other parties in interest constitutes an improper retroactive adjudication regarding the effectiveness of the waiver and the validity of the offer.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

